

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Withdrawal of Sections from the State Implementation Plan

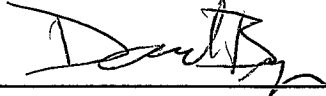
AGENDA REQUESTED: July 28, 2010

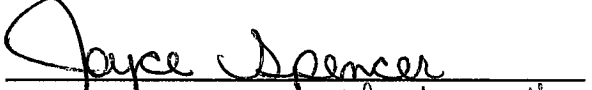
DATE OF REQUEST: July 9, 2010

NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Kerry Howard, 239-0556

CAPTION: Docket No. 2010-0977-MIS. Consideration of the withdrawal from the United States Environmental Protection Agency (EPA) of 30 Texas Administrative Code Sections 101.201(h) and 101.211(f), as adopted by the Commission on December 14, 2005, as revisions to the state implementation plan. Sections 101.201(h) and 101.211(f) concern certain reporting requirements for excess emissions of air contaminants from emissions events and scheduled maintenance, startup, and shutdown activities. (Kathy Pendleton, Janis Hudson)


Chief Engineer


Division Director


Agenda Coordinator for Kerry Howard

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 9, 2010
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: *pel* Susana M. Hildebrand, P.E., Chief Engineer

Docket No.: 2010-0977-MIS

Subject: Commission Approval for Withdrawal of §101.201(h) and §101.211(f) Chapter 101, Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities from the United States Environmental Agency's (EPA) Consideration as a Revision to the State Implementation Plan (SIP)

Background and reason(s) for the recommendation:

Title 30 Texas Administrative Code §101.201(h) and §101.211(f), as adopted by the Commission on December 14, 2005, are included in the revisions to the SIP. Parts of §101.201(h) and §101.211(f), apply to sources not otherwise required to report an annual emissions inventory per §101.10, Emissions Inventory. Any source experiencing at least one emissions event (EE) or maintenance, start-up, or shutdown activity (MSS) in nonattainment areas, maintenance areas, early action compact areas, Nueces County, or San Patricio County is required to report for each site:

- number of EE and MSS (reportable and non-reportable, separately); and
- annual emissions in tons of EE and MSS (reportable and non-reportable), by mixture or compound.

The amounts of emissions data collected have been small since 2006. Reportable amounts are also collected and available in the State of Texas Electronic Reporting System (STEERS). Because of the quantity of reporting, the data are not statistically significant and have not been used in any current air quality planning activities. Staff time is used to review and enter this data, and maintenance costs are incurred annually for the database. Industry is expending resources on data development that is not being used.

Staff recommends removing from consideration by the EPA as a revision to the SIP §101.201(h) and §101.211(f). Sections 101.201(h) and 101.211(f) concern reporting certain small source excess emissions for air quality planning purposes. The requirements for these certain small sources are found in the introductory part of each subsection, as well as in §101.201(h)(3) and §101.211(f)(3). Because those cannot be severed from EPA consideration, the entire subsections must be withdrawn. Staff recommends that the commission be advised that the executive director is considering proposing a rule amendment in the future to remove these requirements and resubmit the amended subsections for approval into the SIP.

Sections 101.201 and 101.211 are proposed for approval into the SIP, and the EPA is subject to a settlement agreement that requires final action by October 31, 2010, which would be effective approximately 30 days later. It is therefore recommended that §101.201(h) and §101.211(f) be removed from EPA consideration of the SIP revision prior to the EPA's final action.

Scope of the proposed recommendation:

A) Summary of what the recommendation will do: If approved, a request will be made to the EPA to remove §101.201(h) and §101.211(f) from consideration as a revision to the SIP.

B) Scope required by federal regulations or state statutes: No.

C) Additional staff recommendations that are not required by federal rule or state statute:

- removal of §101.201(h) and §101.211(f) from EPA's consideration as a revision to the SIP;
- initiate rulemaking at a later time to remove the small source reporting requirements from §101.201(h) and §101.211(f).

Statutory authority:

State authority: Texas Clean Air Act, Texas Health and Safety Code, §382.011, relating to General Powers and Duties; §382.012, State Air Control Plan; §382.014, relating to Emission Inventory; §382.016, relating to Monitoring Requirements; Examination of Records; and §382.017, Rules.

Effect on the:

A) Regulated community: No impact is expected. The data collected are insignificant and not used in any air quality planning.

B) Public: No direct fiscal impact is anticipated to the public.

C) Agency programs: Staff currently review and enter the data into the Small Source Emissions Events and Maintenance Database. The database is also tested each year to ensure it remains operational after a year of unuse. These tasks will no longer be performed.

If the commission decides to go forward with a rulemaking to remove §101.201(h) and §101.211(f), a separate impact analysis will be completed. Regardless of whether these subsections are repealed, the commission has authority under Texas Health and Safety Code, §382.014 and the implementing rule in §101.10 to request this and other emissions information.

Stakeholder meetings: Not applicable.

Potential controversial concerns and legislative interest:

Not collecting the data annually has the potential for the appearance of our collecting data but not using it or to lessen the quality of the overall emissions inventory. Emissions quantity collected between 2006 and 2008 have not exceeded 100 tons of volatile organic compounds statewide.

Will this recommendation affect any current policies or require development of new policies? Future rulemaking will be required to remove the rule.

Commissioners

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? The EPA would approve this as part of the Texas SIP. For removal after SIP approval, the commission would be required to provide an anti-backsliding analysis that is acceptable to EPA.

The data would continue to be collected, reviewed, and entered into the Small Source Emissions Events and Maintenance database.

Agency contacts:

Kathy Pendleton, Air Quality Division, 512- 239-1936

Janis Hudson, Staff Attorney, 512-239-0466

Attachments

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Kevin Patteson
Curtis Seaton
Daniel Womack
Office of General Counsel
Kathy Pendleton, P.E.

ORDER

Docket No. 2010-0977-MIS

On July 28, 2010, the Texas Commission on Environmental Quality (Commission) considered the withdrawal of 30 Tex. Admin. Code §§ 101.201(h) and 101.211(f), as adopted by the Commission on December 14, 2005, from consideration by the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

IT IS THEREFORE ORDERED BY THE COMMISSION that 30 Tex. Admin. Code §§ 101.201(h) and 101.211(f), are hereby withdrawn from submission to EPA as revisions to the SIP.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman